

COMMUNITY AND ECONOMIC DEVELOPMENT CLINIC & HOUSING CLINIC
YALE LAW SCHOOL

TO: Hon. Geoff Luxenberg, Co-Chair; Hon. Marilyn Moore, Co-Chair;
Members of the Housing Committee

FROM: Nathan Cummings, Yale Law School '23

DATE: February 27, 2023

RE: Support for H.B. 6633

Dear Representative Luxenberg, Senator Moore, and members of the Housing Committee:

Thank you for the opportunity to provide testimony today. My name is Nathan Cummings, and I am a third-year law student and member of the Community & Economic Development Clinic at Yale Law School. I write today **in support of H.B. 6633**. Since my first year in law school, I have worked with and helped represent Open Communities Alliance (“OCA”) in their efforts to expand housing opportunities in the state of Connecticut. I believe deeply in OCA’s cause, and I join them today in supporting this legislation that would create a new Fair Share system in which each municipality would work to reach a specific goal for affordable housing in order to meet regional needs.

Local communities frequently oppose proposals like Fair Share based on a perceived lack of capacity to handle new affordable housing, whether in terms of municipal services, finances, or space. In my three years working on Connecticut housing issues as a clinical student, I have heard countless stories from local residents about the overflowing sewers, overtaxed schools, and clogged roads that would inevitably result from building even a handful of new homes in their town. I am here today to urge the members of this Committee not to give in to these fears. If the state’s cities and towns reject a scarcity mindset and commit to building together, there are more than enough resources in Connecticut to go around.

1. Limited public infrastructure is not a valid reason to reject Fair Share.

Some Connecticut towns have expressed concern about the inability to handle the new affordable, multifamily, and missing middle housing that Fair Share would require due to the limitations of their existing infrastructure, particularly public water and sewer services. These concerns are understandable but misplaced. It is true that a genuinely comprehensive long-term solution to the state’s affordable housing crisis will ultimately require at least some investment towards expanding and upgrading its aging infrastructure. But families in Connecticut are struggling to afford homes *today*, and there is still much, much more that municipalities can do to build new housing without waiting for this to happen.

a. New multifamily housing can be built off public water and sewer at gentle densities without environmental or public health risk.

Places that lack public water and sewer infrastructure rely on private septic tanks and wells, which are regulated by the state’s Public Health Code. This code independently controls

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for environmental risks by setting different standards for single-family and multifamily homes that increase based on the number of bedrooms in the structure.¹ In other words, if development would fall above safe limits, the Public Health Code simply will not allow it to be built.

You can see this just by looking at the existing landscape of single-family housing in Connecticut. Over 40% of the state's residents rely on onsite septic systems, and 23% rely on private wells—more than 800,000 people in over 300,000 homes.² Many of those dwellings are large single-family homes that already have five, six, or more bedrooms. This shows that there is nothing inherently dangerous about allowing larger developments on parcels without public utility access. To this end, the state also has plenty of examples of multifamily housing not served by public utilities: just to give one example, almost 20% of housing in the town of Woodbury is multifamily with at least three units, even though the town completely lacks public sewers and a majority of its land area is not served by public water.³

What is more, technology has come a long way since Connecticut's water and sewer networks were first built out, and there are a number of alternatives to traditional centralized public water and sewer infrastructure that towns can now take advantage of. For example, community septic systems are a “cost-effective, efficient, and effective” option that can be used to support housing built at intermediate densities.⁴ There are a number of examples already built in Connecticut, including one in Newtown that singlehandedly serves 49 homes.⁵ The choice between private onsite and public utility services is no longer a simple binary, and towns can deploy these advanced decentralized options to make more efficient and effective use of their land without committing to large-scale expansions of their water and sewer networks.

Many places in Connecticut are not built out anywhere close to the level of residential density where building more housing without simultaneously expanding public utilities would raise public health concerns. Average residential densities in many places in Litchfield County are as low as one unit for every six acres, based on available state and local data.⁶ In these kinds

¹ *On-site Sewage Disposal Regulations and Technical Standards for Subsurface Sewage Disposal Systems*, Conn. Dep't Pub. Health 28 tbl.5 (Jan. 2023), https://portal.ct.gov/-/media/Departments-and-Agencies/DPH/dph/environmental_health/environmental_engineering/2023-uploads/TS-Master-2023-1242023.pdf.

² See *Environmental Engineering – Subsurface Sewage*, Conn. State Dep't of Pub. Health, <https://portal.ct.gov/dph/Environmental-Health/Environmental-Engineering/Environmental-Engineering---Subsurface-Sewage> (last visited Feb. 26, 2023); *Private Wells*, Conn. State Dep't of Pub. Health, <https://portal.ct.gov/dph/Environmental-Health/Private-Well-Water-Program/Private-Wells> (last visited Feb. 26, 2023).

³ *Woodbury Plan of Conservation & Development 2020 – 2030*, Town of Woodbury 9, 39 (2020), https://woodburycct.org/vertical/Sites/%7B59751637-3DF2-41D3-B20A-866E470B1D1D%7D/uploads/WoodburyPOCD-Final-Compressed_Correct_effective_date_2nd_version.pdf.

⁴ Kyle Massner, *Community Septic Systems*, Sustainable Dev. Code, <https://sustainablecitycode.org/brief/allow-community-septic-systems>.

⁵ *Id.*

⁶ See, e.g., *Town of Washington 2014 Plan of Conservation and Development*, Washington Planning Comm'n 59, A9-10 (Apr. 1, 2015), <https://www.washingtonct.org/planning-commission/pages/2014-plan-of-conservation-and-development> (describing 2,124 housing units on 12,599 acres of parceled residential land as of 2014); *id.* at 60 (estimating that the town could support at least 2,300 more building lots if built out to capacity under current conditions).

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of places, Fair Share need not force small towns to take on expensive new water and sewer projects to meet their housing production goals. They would be free to permit new housing to be built at moderately higher densities without first expanding public utility services, and could also decide to combine both approaches by both upzoning and building out utilities simultaneously.

Other states across the country have already allowed at least some “missing middle” or denser multifamily housing to be built regardless of whether or not there is already infrastructure in place. These states have moved towards a similar approach of using generally applicable public health standards, not zoning, to prevent adverse impact from denser development. For example, Connecticut’s neighbor Massachusetts passed a law in 2021 requiring local communities near mass transit to allow multifamily housing of up to 15 units per acre as-of-right near stations, subject to general state public health requirements, whether or not there is public water and sewer.⁷ The implementing guidelines for this law stated that:

[C]ompliance with [the law] does not require a municipality to install new water or wastewater infrastructure, or add to the capacity of existing infrastructure, to accommodate future multifamily housing production within the multi-family zoning district. *In most cases, multi-family housing can be created using private septic and wastewater treatment systems that meet state environmental standards.* Where public systems currently exist, but capacity is limited, private developers may be able to support the cost of necessary water and sewer extensions.⁸

In sum, existing infrastructure—particularly public water and sewer infrastructure—does not create a hard ceiling on the state’s affordable housing potential. There are many creative solutions and workarounds that towns can take towards meeting their Fair Share goals while still working within existing limits, and the bill gives them the freedom to select the option that works best for their particular circumstances.

b. Public infrastructure can be built out cost-effectively, and Fair Share can adjust expectations as towns do so.

While it is possible for towns to meet their Fair Share goals without spending a fortune on new water and sewer pipes, they should still be expected to make reasonable efforts to expand their services in order to accommodate growth, and should not be allowed to use infrastructure as an excuse to keep out new housing.

To this end, Fair Share creates an intentionally flexible process in which municipalities’ housing needs allocations can be carefully tailored to accommodate their changing circumstances. The system adjusts housing needs allocations over successive ten-year cycles,

⁷ Mass Gen. Laws ch. 40A, § 3A (2023), <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A/Section3A>.

⁸ *Compliance Guidelines for Multi-Family Zoning Districts Under Section 3A of the Zoning Act*, Mass. Dep’t Hous. & Cmty. Dev. 10 9 (Oct. 21, 2022), <https://www.mass.gov/doc/compliance-guidelines-for-multi-family-zoning-districts-under-section-3a-of-the-zoning-act/download> (emphasis added); *see also*

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which matches the long timeline necessary to plan, design, and build new infrastructure projects. While, as stated, many towns may be able to build significant amounts of new housing without needing to expand public services at all, the bill still leaves the Office of Planning and Management with the power to consider a town's infrastructure as a factor in determining their initial allocation. This could then be adjusted over time: for example, a town with little to no public sewer could start with a modest Fair Share goal that is then adjusted upward in a subsequent cycle following sewer build-out.

A good bit of the cost of new public infrastructure can be carried by private developers, who will pay to extend out connections to existing networks.⁹ New water and sewer utilities will also help pay for themselves over time because they are financed in part by user fee revenues from properties that use their services. Further, expanding utilities will drive new development that will help grow towns' grand lists, serving to further offset costs. And, of course, the state could also always step in, if Fair Share were enacted, to help towns build out their infrastructure through expanded grant and loan funding,¹⁰ more of which may be available than in the past due to significant federal appropriations for infrastructure projects.¹¹

2. Fair Share will not overtax communities' other public services and resources.

Concerns about other potential impacts of Fair Share, including natural resources, physical characteristics, open space, traffic, and school capacity, are also unfounded. Fair Share will allow communities to grow to meet the state's needs without sacrificing the aspects that their residents value most.

a. Fair Share can help create and preserve more open space and protect the environment.

Affordable housing development is too often placed at odds with the need to protect natural resources like water, open space, and undeveloped land. But building more densely, by allowing multifamily buildings as well as large-lot single-family homes, is in many ways *better* for the environment. The EPA has recognized that denser residential development helps preserve natural resources and avoid runoff from impervious coverage by reducing suburban sprawl.¹² Increasing residential density can help avoid environmentally intensive "greenfield" development of new subdivisions. Even in towns that are more rural and further away from major population centers, building new housing in more compact built forms can help preserve

⁹ Cal. Planning Roundtable, *Myths and Facts about Affordable & High Density Housing*, Cal. Dep't Hous. & Cmty. Dev. 4 (2007), <https://www.losgatosca.gov/DocumentCenter/View/2716/Myths--Facts-about-Afford--Hi-Density-Housing>.

¹⁰ This follows approaches taken by peer states like Massachusetts. See *Housing Choice Designation*, Mass.gov, <https://www.mass.gov/info-details/housing-choice-designation> (offering more favorable terms for state water and sewer financing to towns that take steps to increase housing production).

¹¹ See Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021); Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818.

¹² U.S. Env't Prot. Agency, EPA 231-R-06-001, *Protecting Water Resources with Higher-Density Development* (2014), <https://www.epa.gov/smartgrowth/protecting-water-resources-higher-density-development>.

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these towns' natural resources and open space by avoiding the need to drive development onto new large lots.

b. Fair Share will allow communities to maintain their physical characteristics.

The General Assembly already recognized in 2021 that neighborhood “character” is not an appropriate goal of zoning and has been historically used as a harmful means of discrimination.¹³ However, towns are still allowed to regulate “physical characteristics,” and this bill does not take away their right to do so. Municipalities will have the power to design their own fair share plans that provide for new housing in ways that make sense for their communities. In many cases, affordable and multifamily housing can easily be fit into the existing landscape of a community without changing its built environment.

c. Fair Share will not create traffic or parking problems for communities.

Fair Share goals can be reached in a way that has little impact—or even a positive impact—on traffic and parking. In many communities, much more housing could be built without putting a significant strain on traffic. In fact, research has shown that when municipalities attempt to measure the impact of new housing on traffic, they tend to overestimate the effect that new development actually has, as well as the amount of new parking needed to accommodate it.¹⁴ Adding new workforce housing to suburban job centers can also help reduce traffic by allowing employees to live closer to work rather than commuting long distances.¹⁵ Building more densely also allows people to use alternatives to cars like walking, bicycling, and public transit.

d. Fair Share will not negatively impact property values.

The development of denser, more affordable housing under Fair Share will not negatively impact property values. Multiple studies have shown that new affordable housing construction projects do not negatively affect the valuation of nearby properties in the neighborhood.¹⁶ While

¹³ See Pub. Act. No. 21-29, § 4 (Conn. 2021) (amending Conn. Gen. Stat. § 8-2 to replace references to “character” with “physical site characteristics”); see also, e.g., *Mhany Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 608-09 (2d Cir. 2016).

¹⁴ Hao Ding & Brian D. Taylor, *How Does Traffic, or the Fear of It, Affect Housing Affordability?*, UCLA Inst. for Transp. Stud. (2021), <https://escholarship.org/uc/item/53k58197>; Adam Millard-Ball, *Phantom Trips: Overestimating the Traffic Impacts of New Development*, 8 J. Transp. & Land Use (2015), <https://conservancy.umn.edu/handle/11299/172098>; Donald C. Shoup, *The Trouble with Minimum Parking Requirements*, 33 Transp. Rsch. Part A: Pol’y & Prac. 549 (1999), <https://www.sciencedirect.com/science/article/pii/S0965856499000075>.

¹⁵ See Cal. Planning Roundtable, *Myths and Facts about Affordable & High Density Housing*, Cal. Dep’t Hous. & Cmty. Dev. 3 (2007), <https://www.losgatosca.gov/DocumentCenter/View/2716/Myths--Facts-about-Afford--Hi-Density-Housing>.

¹⁶ See, e.g., Ctr. for Housing Pol’y, *“Don’t Put it Here!”: Does Affordable Housing Cause Nearby Property Values to Decline?*, *Insights from Housing Policy Research* (2009), https://furmancenter.org/files/media/Dont_Put_It_Here.pdf; Bloomberg, *What Does Affordable Housing Do to Nearby Property Values?* (May 2, 2022), <https://www.bloomberg.com/news/articles/2022-05-02/does-affordable-housing-lower-property-values>; Cal. Planning Roundtable, *supra* note 12, at 5.

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there is an argument that increasing housing supply might exert general downward pressure on property values more broadly, this is ultimately self-defeating. Towns across Connecticut are seeing shrinking grand lists and stagnant economic growth,¹⁷ and it does not make sense to maintain the status quo on the basis of safeguarding property values when building more housing could help *improve* these values by attracting new jobs, new business, and new opportunities.

e. Fair Share will improve Connecticut's schools, better preparing all students to contribute to the workforce of the future.

Fair Share will help to make educational opportunities across Connecticut more equitable. While some schools in historically exclusive towns may find that the size and/or demographics of their student populations shift slightly as a result of this legislation, this is a good thing. With our nation becoming increasingly diverse, it is critical that all of Connecticut's school children, including those living in more expensive suburbs, be culturally competent. Diverse school settings allow that. In addition, numerous studies have demonstrated that all children learn better when permitted to interact with classmates of different backgrounds.¹⁸ By encouraging a more equal distribution of affordable housing across the state, the Fair Share bill will help to increase opportunities for kids of all backgrounds to access resource-rich, high-performing schools, and relieve some of the pressure on under-resourced, over-burdened schools and educators in the state.

* * *

In conclusion, the Fair Share proposal is both achievable based on Connecticut's current infrastructure and necessary to build a foundation for the state's future. For these reasons, I urge you to vote yes on H.B. 6633.

Sincerely,



Nathan Cummings

¹⁷ See Al Sylvestre, Conn. Dep't of Labor, *Connecticut's Path to More Affordable Housing*, Conn. Econ. Digest (Apr. 2018), <https://www1.ctdol.state.ct.us/lmi/digest/articles/ConnecticutsPathtoMoreAffordableHousing.asp>.

¹⁸ See, e.g. Amy Stuart Wells, Lauren Fox, & Diana Cordova-Cobo, *How Racially Diverse Schools and Classrooms Can Benefit All Students*, Century Foundation (2016), https://production-tcf.imgix.net/app/uploads/2016/02/09142501/HowRaciallyDiverse_AmyStuartWells-11.pdf; Roslyn Arlin Mickelson, *School Integration and K-12 Outcomes: An Updated Quick Synthesis of the Social Science Evidence*, (2016) <http://www.school-diversity.org/pdf/DiversityResearchBriefNo5.pdf>; Jack Schneider, Peter Piazza, Rachel S. White, and Ashley Carey, *Student Experience Outcomes in Racially Integrated Schools: Looking Beyond Test Scores in Six Districts*, 54 Education and Urban Society 330 (2022), <https://journals.sagepub.com/doi/10.1177/00131245211004569>.